



December 8, 2014

Diona Mullins  
Policy Advisor  
Office of Health Policy  
275 E. Main St., 4W-E  
Frankfort, KY 40621

**Re: Special Memorandum Regarding Certificate of Need Modernization: Core Principles Request for Stakeholder Input**

Dear Ms. Mullins:

Thank you for this opportunity to comment on the Office of Health Policy's ("OHP") October 8, 2014 Special Memorandum regarding Certificate of Need Modernization: Core Principles Request for Stakeholder Input (the "Memo"). LeadingAge Kentucky is an association of long-term care providers, including nursing facilities, ICF/IID, continuing care retirement communities, assisted living facilities and home and community-based service providers. We provide services to our members to help them enhance the lives of their patients and residents. Additionally, we serve our members by representing and advocating for their best interests before legislative and regulatory bodies. The continued success and effectiveness of the Kentucky Certificate of Need ("CON") process is important to LeadingAge and its members.

According to the Memo, the OHP believes that reform of the CON process is necessary due to the passage and implementation of the Patient Protection and Affordable Care Act ("PPACA"). While we agree that certain changes to the CON process would streamline and improve the process for existing and future long-term care providers, the CON process has proven to be a crucial component of the Kentucky healthcare industry's aim to provide high-quality, accessible and affordable healthcare.

The Kentucky General Assembly created the CON process to ensure that Kentucky residents have access to safe, adequate and efficient medical care. The CON process helps prevent the proliferation of unnecessary healthcare facilities and services, which in turn helps manage the cost of providing healthcare. Specifically, the CON process has prevented healthcare providers from investing enormous capital expenditures in facilities or services for which there is inadequate demand or patient base. The costs associated with building, establishing and operating a long-term care facility are substantial. If facilities have continual excess capacity, then the competition for patients increases, particularly patients with commercial insurance. Ultimately, uninsured and low-income patients and the facilities that serve these patients are disadvantaged if not protected by the CON process. In this way, the CON process has aided Kentucky in controlling the costs of healthcare and creating a more effective and efficient healthcare delivery system for all its residents.

That being said, LeadingAge recognizes that certain changes are necessary to better serve the goals of the CON process. As such, LeadingAge makes the following recommendations:

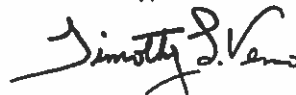
- (1) The OHP should eliminate the CON requirement for home and community-based services ("HCBS"), including outpatient rehabilitation, home health

services, hospice services and adult daycare services. As discussed above, the CON process is crucial for regulating and controlling the costs associated with high-risk projects that require a large capital investment. The establishment of HCBS does not, however, involve a large financial investment. And thus, requiring a CON for HCBS places an unnecessary regulatory hurdle on these providers. Eliminating the CON requirement will incentivize existing and future providers to establish HCBS in Kentucky. HCBS provide patients with choices regarding their care and are often a lower cost alternative to long-term care facility services. The elimination of the CON requirement for HCBS will, in fact, further achieve the goals of the CON program – enhancing the accessibility of safe and efficient healthcare services.

- (2) The OHP should temporarily allow long-term care facilities to transfer up to ten (10) beds from low-utilization service areas to high-utilization service areas. This change will allow long-term care providers to quickly and effectively respond to demographic changes in a particular service area. Additionally, permitting providers to shift beds from low-utilization service will benefit Kentucky residents in areas where it is difficult to access long-term care services.
- (3) The OHP should simplify the six-month reporting requirement. The reporting requirement has become an onerous, complicated and costly process for providers. Personnel spend a great deal of time completing the necessary reports, which takes away time that could otherwise be spent operating and managing the facility. Further, providers often must seek outside assistance to comply with the reporting requirement, which increases a provider's operational costs. Again, LeadingAge supports the CON process as a whole, but in practice the reporting requirement impedes, rather than aids, the original goals of the CON process.
- (4) To seek amendment of 216B.332 (3) to remove the restriction on admissions to continuing care retirement community's (CCRC) nursing home beds to on-campus residents. This restriction severely limits development of new CCRCs in the Commonwealth and Kentucky should seek a model similar to the state of Florida which allows for unrestricted access to a CCRC's nursing home beds whether they are a current resident of the CCRC campus or from outside the CCRC for a period of five (5) years from the date of initial licensure.

Thank you again for the opportunity to provide insight on these issues. We recognize and appreciate the need to improve the CON process while maintaining the components necessary to ensure a stable and effective healthcare industry. Thank you in advance for your time and consideration of these issues.

Sincerely,



Timothy L. Veno,  
President